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BEFORE THE

Federal Communications Commission

JUN 29 1993

WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MM DOCKET NO. 93-49
)	
Amendment of Section 73.202(b))	RM-8193
Table of Allotments)	RM-_____
(Los Lunas, Espanola and)	
Pojoaque, New Mexico))	

To: Chief, Allocations Branch

**JOINT REQUEST FOR
APPROVAL OF AGREEMENT**

Wizard Broadcasting Company ("Wizard") and Cheryl S. Potter ("Potter"), by their respective counsel, hereby jointly request approval of the Agreement filed herewith as Attachment 1, seeking withdrawal of the Potter counterproposal and of her expression of interest in a new FM allotment to Pojoaque, New Mexico, so as to permit amendment of the FM Table of Allotments to upgrade FM station KOYT, Los Lunas, New Mexico to Channel 273.

Attachments 2 and 3 hereto are the Declarations of Elliott McDowell, President and sole stockholder of Wizard Broadcasting Company, and of Cheryl S. Potter, respectively, declaring under penalty of perjury that their rulemaking proposals and related expressions of interest were not filed for the purpose of reaching or carrying out this or any other settlement agreement, and that they believe the Agreement, after Commission approval, will serve the public interest because it will greatly expedite the improve-

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ment of FM radio service in Los Lunas, New Mexico, and the surrounding area, and will obviate the need for further proceedings.

As set forth in the Agreement and in the Declarations, no payments are being made to the counterproponent or any other party pursuant to this Agreement. Because there is no exchange of monetary consideration contemplated by the Agreement, a showing pursuant to Section 1.420(j) of the Rules concerning the expenses incurred by the counterproponent is not needed.

In view of the foregoing, the parties hereto urge the Commission to approve the Agreement and to amend the FM Table of Allotments so as to allow for the upgrade of KOYT(FM) as proposed.

Respectfully submitted,

WIZARD BROADCASTING COMPANY

By: Barry D. Wood
Barry D. Wood
JONES, WALDO, HOLBROOK
& McDONOUGH, P.C.
2300 M Street, N.W.
Washington, D.C. 20037
(202) 296-5950

CHERYL S. POTTER

By: John R. Wilner
John R. Wilner
BRYAN CAVE
700 - 13th Street, N.W.
Washington, D.C. 20005
(202) 508-6041

Their Counsel

June 29, 1993

AGREEMENT

This Agreement is made and entered into as of this 23rd day of June, 1993, by and among Wizard Broadcasting Company, a New Mexico corporation ("Wizard"), Elliott McDowell ("McDowell"), Community Broadcasting, Inc., aka Community Radio Corporation ("Community"), William R. Sims ("Sims"), and Cheryl S. Potter ("Potter").

R E C I T A L S:

A. On December 23, 1992, McDowell, Sims and Enchantment Media, Inc. (now Community") entered into a Stock Redemption Agreement. On December 31, 1992, McDowell and Sims entered into a Consulting Agreement, which was modified on March 1, 1993 and April 2, 1993. The Consulting Agreement was terminated by a Satisfaction of Consulting Agreement and Release, dated May 7, 1993, among McDowell, Sims and Community. Among the terms of the foregoing instruments is a covenant barring Sims and Community from competing with McDowell in FM broadcasting in the Santa Fe, New Mexico area for five years.

B. On February 5, 1993, McDowell filed a Petition for Rule Making seeking upgrade of the channel class of FM Station KOYT, Los Lunas, New Mexico, to Channel 273 (102.5 MHz) as a full Class C channel and for allotment of Channel 225C3 (92.9 MHz) to Espanola, New Mexico, to be used by FM Station KIOT in lieu of its present frequency of 102.3 MHz (Channel 272C3). This Petition was subsequently amended to make Wizard the petitioner.

C. On May 13, 1993, Potter filed a pleading styled Comments and Counterproposal seeking assignment of 92.9 MHz to Pojoaque, New Mexico.

The parties, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, hereby agree as follows:

1. Potter hereby agrees to withdraw, within two days of the date hereof, her Comments and Counterproposal seeking allotment of 92.9 MHz to Pojoaque, New Mexico.

2. Contingent upon the FCC's dismissal of the counterproposal for Pojoaque noted above, McDowell and Wizard hereby agree to release Sims from his covenant not to compete, set forth in the above-recited documents, on the earlier of the following:

a. The initiation of broadcasting operations (otherwise known as program tests) by FM Station KOYT with Class C facilities on 102.5 MHz from any transmitter site on Sandia Crest, Bernalillo County, New Mexico; or

b. Two years from the date hereof.

3. Community, Sims and Potter hereby covenant that they will promptly pursue the withdrawal of the Pojoaque counterproposal, including the filing with the FCC of whatever documents may be necessary to accomplish that end, and that neither they nor any party relating to or connected with them will take any action to undermine, discourage, block or delay the assignment of Channel 273C to Los Lunas, the assignment of Channel 225C3 (92.9 MHz) to Espanola for use by Station KIOT, and the other ends set forth in the Petition for Rule Making filed by McDowell.

4. If litigation should be necessary to enforce the terms of this Agreement, the party or parties which the court finds to have breached this Agreement shall reimburse the non-breaching party or parties for their reasonable costs, including attorneys fees, in enforcing this Agreement.

5. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement.

6. This Agreement shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

7. Each of the parties warrants that he, she or it has authority to execute this Agreement.

IN WITNESS WHEREOF, the parties have executed this document as of the day
and year first above written.

WIZARD BROADCASTING COMPANY

By: Elliott McDowell
Elliott McDowell, President

ELLIOTT McDOWELL, an individual

Elliott McDowell

**COMMUNITY BROADCASTING, INC.
aka COMMUNITY RADIO CORPORATION**

By: _____
William R. Sims, President

WILLIAM R. SIMS, an individual

CHERYL S. POTTER, an individual

IN WITNESS WHEREOF, the parties have executed this document as of the day and year first above written.

WIZARD BROADCASTING COMPANY

By: Elliott McDowell, President

ELLIOTT McDOWELL, an individual

**COMMUNITY BROADCASTING, INC.
aka COMMUNITY RADIO CORPORATION**

By: William R. Sims, President

WILLIAM R. SIMS, an individual

William R. Sims

CHERYL S. POTTER, an individual

Cheryl S. Potter

DECLARATION

I, Elliott McDowell, hereby state as follows:

1. I am President of Wizard Broadcasting Company, licensee of FM station KOYT, Los Lunas, New Mexico, and FM station KIOT, Espanola, New Mexico.

2. I filed on February 5, 1993 a Petition for Rule Making for the upgrade of station KOYT(FM), Los Lunas, New Mexico, to full Class C status in connection with the move of the present Espanola allotment to Channel 225C3. The Petition was later amended to substitute Wizard Broadcasting Company as the petitioner.

3. Wizard Broadcasting Company has reached a Settlement Agreement with Cheryl S. Potter, who filed a counterproposal requesting use of Channel 225C3 in Pojoaque, New Mexico. The rulemaking proposal involving Los Lunas was not filed for the purpose of reaching or carrying out this or any other settlement agreement, and that I believe that this settlement agreement will serve the public interest because it will expedite the provision of improved FM radio service to Los Lunas, New Mexico, and will obviate the need for further proceedings, thereby conserving the Commission's and the parties' resources.

4. Neither I nor anyone else associated with Wizard Broadcasting Company has paid or promised to pay any consideration in connection with the request for dismissal of the Potter counterproposal or the withdrawal of

her expression of interest in the Pojoaque allotment other than that set forth in the Agreement to be filed with the FCC with this declaration. No money is to be paid to Ms. Potter under that Agreement.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 24~~th~~ day of June, 1993.


Elliott McDowell

DECLARATION

ATTACHMENT 3

I, Cheryl S. Potter, submitted a counterproposal on May 13, 1993 in MM Docket 93-49, in the rulemaking involving Channel 273 in Los Lunas and Channels 272 and 225 in Espanola, New Mexico, hereby state that my counterproposal for allotment of Channel 225 in Pojoaque, New Mexico, was not filed with the Commission for the purpose of reaching or carrying out this or any other settlement agreement, and that I believe that this settlement agreement will serve the public interest because it will expedite the provision of improved FM radio service to Los Lunas, New Mexico and the surrounding area, and will obviate the need for further proceedings, thereby conserving the Commission's and the parties' resources.

I have not been paid or promised any consideration in connection with the request for dismissal of the counterproposal or the withdrawal of my representation of interest in the Pojoaque allotment other than that set forth in the Agreement to be filed with the FCC with this declaration. No money is to be paid to me under that Agreement. Therefore, such consideration obviously does not exceed my reasonable and prudent expenses incurred in preparing and advocating the counterproposal.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 28 day of June, 1993.


Cheryl S. Potter